THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.11857 OF 2000

DATED:28.7.2005

Between:

B.S.R.S.S.S.N.V.Narasimha Rao

…Petitioner

And

The Government of Andrha Pradesh, and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The petitioner is a resident of Pangidigudem in West Godavari District. He lodged a private complaint under Section 200 of Code of Criminal Procedure, 1973 (CrPC) alleging that third respondent herein, who is none other than his cousin made an attempt to murder the petitioner. It appears that subsequently the case came to be taken on file as S.C.No.304 of 1997 on the file of the Court of Principal Assistant Sessions Judge, Eluru. When the case was pending, the Government of Andhra Pradesh, first respondent herein, issued G.O.Rt.No.698, dt.26.4.2000 directing the Collector and District Magistrate, West Godavari District to request the Public Prosecutor to file a petition under Section 321 of CrPC for withdrawal of S.C.No.304 of 1997. Said orders were issued on a representation made by petitioner to the Government seeking permission to withdraw the prosecution against third respondent. Thereafter, learned Additional Pubic Prosecutor attached to the Court of Principal Assistant Sessions Judge, Eluru, filed a petition under Section 321 of CrPC seeking permission to withdraw the Sessions Case. The learned Sessions Judge accordingly passed orders on 17.5.2000 permitting withdrawal of the Sessions Case. The petitioner, who is *de facto* complainant, filed this Writ Petition on 3.7.2000 challenging the Government Order being G.O.Rt.No.698, dt.26.4.2000 and the order of the learned Sessions Judge, dt.17.5.2000, permitting withdrawal of the case.

In his affidavit the petitioner alleges that no notice was given to him before passing the orders withdrawing the case and that the Government issued orders purporting to act on a representation allegedly given by petitioner along with third respondent. The petitioner denies that he ever gave any representation to the Government seeking permission to withdraw the criminal case. The G.O. is also challenged on the ground that it does not disclose any reasons.

The respondents 1 and 2 in their counter affidavit stated that the Government received representation from the petitioner along with affidavit stating that he has reached an understanding with third respondent and therefore he may be permitted to withdraw prosecution. Accordingly, the Government issued orders directing District Collector to request Additional Public Prosecutor to withdraw the case.

Third respondent in his counter affidavit alleged that petitioner filed an affidavit before Home Minister requesting to give necessary permission to withdraw Sessions Case, that in the affidavit he admitted that compromise talks are going on between petitioner and third respondent on the advise of well-wishers and elders. It is also stated that the petitioner approached the Home Minister on legal advice though he thought of filing petition before Sessions Court seeking acquittal of the accused - third respondent.

The Writ Petition was admitted on 10.7.2000. The matter was heard by me on 19.7.2005, and the learned Assistant Government Pleader for Home was directed to produce the file in view of denial across the Bar that petitioner did not make any representation seeking permission to withdraw the prosecution. The file is produced before this Court for perusal. Further, the counter affidavits are filed in this Court long back, but no reply affidavit is filed denying the allegations. It is well settled that averments made in the affidavits, which are not denied by filing rejoinder/reply

affidavit, shall be taken as admitted (See **C.S.Rowji v. State of A.P., Bharat Singh v. State of Haryana, Naseem Bhanu v.State of U.P.**).

Learned counsel for the petitioner, Sri K.Chidambaram, submits that the petitioner never made any representation and did not file any affidavit before Home Minister as alleged. Secondly, he would urge that no notice was issued by the Court before permitting the Additional Public Prosecutor to withdraw Sessions Case and therefore the action of the respondents is bad. **Per contra**, learned Senior Counsel for third respondent Sri T.Bali Reddy, and learned Assistant Government Pleader for Home submits that in the absence of denial of averments made by the Government, petitioner cannot now be permitted to take plea that he never filed any affidavit. Other contentions are refuted by the learned counsel.

It is always permissible for the Public Prosecutor under Section 321 of CrPC to approach the Criminal Court and seek permission to withdraw the prosecution. This power to withdraw criminal case is conferred on the Public Prosecutor. In this case, the Government only directed the District Collector to request Public Prosecutor having regard to representation made by the third respondent. As disclosed from the file produced before this Court, the Government called for the remarks of the Superintendent of Police and Public Prosecutor. The Additional Public Prosecutor in his remarks sent vide letter dt.20.12.1999 opined that the facts of the case do not come under the ambit of Section 307 IPC and that it is very unlikely for any witness to come and depose in favour of prosecution especially when there is compromise between *de facto* complainant and the accused. Further, the affidavit, which is found at page numbers 5 to 7 of the file produced from the first respondent, would clinchingly show that even according to the petitioner on the advice of well-wishers and elders the property dispute is already settled between petitioner and third respondent. Therefore, the Additional Public Prosecutor was justified in filing petition under Section 321 of CrPC for withdrawal of the case. As noticed above, even though counter affidavit is filed long back by first respondent as well as second respondent, no reply affidavit is forthcoming. Therefore, the case pleaded on behalf of petitioner cannot be accepted.

The submission that the Government directed the Additional Public Prosecutor to withdraw the case and without applying mind the latter filed petition under Section 321 of CrPC cannot be accepted. According to first respondent, as disclosed from the file, third respondent made a representation and the petitioner filed affidavit. The Government got report/comments from the Superintendent of Police and the Additional Public Prosecutor and accordingly issued impugned Government Order directing the District Collector to request for withdrawal of the case. In this whole process, the Government acted reasonably and on the ground that petitioner now denies filing of affidavit or representation, the same cannot be held to be unreasonable. The very fact that petitioner approached this Court with delay of two months and the very fact that he did not file any affidavit denying the allegations proves that what is contended now is an after thought.

The Writ Petition is therefore devoid of merits and is accordingly dismissed.

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(V.V.S.RAO, J)

28.7.2005

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